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CHARLES ELMORE CROPL
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United States of America

In the

Supreme Court of the United States

No. 669

THE FRATERNAL ORDER OF POLICE, a corporation not not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,

Plaintiffs and Petitioners,

v.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,

Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

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Plaintiffs and Petitioners,

v.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,

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PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

Petitioners, by Edward N. Barnard, their attorney, respectfully show the court as follows:

I. That Edward N. Barnard is an attorney at law, qualified to practice that profession under the laws of the

State of Michigan, and maintains offices at 906 Dime Building, Detroit, Wayne County, Michigan, and that he is counsel for the Fraternal Order of Police, a corporation not for profit organized and existing under the laws of the State of Michigan, also Joseph Johnson Lodge, No. 102 of the City of Lansing, Michigan, a subordinate lodge of the Fraternal Order of Police, plaintiffs below and petitioners here, and files this petition in their behalf, and has authority so to do.

II. For a summary and short statement of the matter involved, petitioners show the court:

1. Petitioners filed a bill of complaint (R. 5-13) on the Chancery side of the Circuit Court for the County of Ingham, State of Michigan, on November 26, 1941. This bill alleges that Fraternal Order of Police is a non-profit corporation, organized April 23, 1939, for the purpose of promoting better fellowship among the members of the Police Department, to encourage education and investigation in matters pertaining to police work, for the mutual protection and relief of employees of Police Department who become members and their families and relatives exclusively. Its objects and purposes are further stated, according to the bill of complaint, in the preamble to its Constitution as follows:

> "We, the members of the various Police Departments of this State (meaning the State of Michigan) convinced that it is to the best interests of our members, hereby unite under the name of the Fraternal Order of Police of Michigan, and believing that intelligence, industry and normal work are the true standards of greatness, do hereby pledge ourselves to use all honorable means to promote sociability and fraternity among the members of this Order."

The bill alleges that the organization is strictly non-political, non-sectarian, and cannot be affiliated with any labor or political action organization. Among its activities are the prevention of crime, and the carrying on of social and charitable work in collaboration with the larger established fraternal and civic organizations, in the alleviation of economic distress among the underprivileged groups of the community in which local lodges are established and maintained. The bill goes on to state that plaintiffs Joseph Johnson Lodge No. 102 is a subordinate lodge of the Fraternal Order of Police, established June 3, 1941, with membership composed of the Lansing policemen and the law enforcement officers of Ingham County and its subdivision, and that there have been twelve other local chapters of Fraternal Order of Police organized in Michigan in 24 municipalities.

The bill charges that defendants are members of the Lansing City Police and Fire Commission under the terms of the Charter of that City and has jurisdiction over the Police Department, and did on August 13, 1941, adopt the following resolution:

> "No superior officer of the Lansing Police Department shall be a member of the Fraternal Order of Police; further the Lansing Lodge shall confine its members to the Lansing Police Department and shall have no associate or honorary members."

A subsequent hearing on October 14, 1941, was had concerning this resolution, attended by representatives of plaintiff, and defendants refused to rescind this resolution. The bill further alleges that defendants threaten that any persons who disobey such order will be called before said commission and are subject to dismissal or other action that said commission may see fit to take in the form of punishment, and prays as follows:

"* * * that the defendants may be compelled to aswer this Bill of Complaint but not on oath, their oath be hereby specifically waived. Plaintiffs further pray that this court issue a temporary order of injunction restraining the defendants and each of them from using any means whatsoever to compel the plaintiffs and other members of the Police Department of said City to resign or withdraw their membership in said The Fraternal Order of Police and its said subordinate lodge; restraining and enjoining the defendants from threatening, intimidating, coercing or otherwise interfering with the plaintiffs and or any other member of the Police Department of said city who has joined, desires to join, or who joins in the future the said Fraternal organization and lodge; enjoining said defendants from dismissing or harassing any member of the said Police Department because of his membership in said The Fraternal Order of Police, or its said subordinate lodge, or because of his application to join the same; also enjoining the defendants from penalizing, punishing or injuring in any manner the plaintiffs or any other member of the Police Department who has heretofore or who hereafter joins said organizations; and that upon final hearing, a Decree may be entered herein making said injunction permanent and for all other legal and equitable relief to which plaintiffs may be entitled."

2. An order to show cause (R. 14-15) why the injunction as prayed should not issue came on for hearing in the said Circuit Court on December 18, 1941, when by consent of counsel, the cause proceeded to hearing on the merits (R. 27). It was shown by proofs on behalf of plaintiffs that the Fraternal Order of Police is a national organization and that its purposes are set forth in its Constitution and By-laws, which were admitted into evidence (R. 33). It is a Fraternal Order established under a National

Charter in Pittsburgh and under a State Charter in Michigan (R. 27-28). Its membership is composed of all regularly employed law enforcement officers, including State, County, Municipal and National, such as F. B. I. (R. 34). Plaintiff, Joseph Johnson Lodge, is subordinate to the State Lodge, and is located in Lansing (R. 28). The subordinate lodges have associate members composed of public-spirited citizens who wish to cooperate with the police (R. 28-29). The Order functions in many ways, such as to combat child delinquency and also has charitable activities (R. 28-29). A witness related a circumstance whereby the Grand Rapids, Michigan lodge found in a certain area of that city inhabited by colored persons that there was an annual record of a large number of arrests of children for juvenile delinquency, amounting to more than 225 (R. 99). The local lodge, in conjunction with associate members, and the chief of police who was a member, set up a "Young Commonwealth." The officers devoted their time and labor and a building was erected, with a playground. There was equipment for both girls and boys. A partially disabled police officer was put in charge. In one year the arrests for juvenile delinquency in this area was cut down to three (R. 29-30). Other instances were related in reference to Jackson, Michigan (R. 30) and in Cleveland, Ohio (R. 31).

Associate members become such on application recommended by three regular members, and upon vote of the whole lodge (R. 34-35). An associate member may carry insignia, two or three inches in size, on the license plate of his car, showing that he is such (R. 35-36). He also has a membership card given him when he pays his dues (R. 36). The emblem sells for $1.50 (R. 36). If at any time found guilty of a law infraction, he is removed from membership (R. 37). The emblem is the property of the

lodge (R. 40). Application of proposed associate members are investigated (R. 38). F. B. I. men are members and the Order cooperates with the F. B. I. (R. 38-39). In Grand Rapids F. B. I. men have lectured to the Order, particularly about subversive elements in foreign and alien matters (R. 39). Associate members are not allowed any preferences or discrimination regarding law enforcement (R. 39-40). The National Constitution of the Order sets no limits on the number of associate members, and in one chapter, at Niles, Michigan, there are 13 regular members and about 100 associate members (R. 40-41). This matter is left to the local lodges (R. 41).

The objects and purposes of the organization, it was shown by the constitution which was introduced in evidence, are as follows (R. 46):

> "Section 1. This organization is formed for the purpose of promoting personal and efficient coöperation between the police officers of the cities in these various states to the end that the public may be better served in the consideration of law and law enforcement.
>
> Section 2. Advancing social, charitable and educational undertakings among police.
>
> Section 3. To more effectively combat crime by unity and concerted action in all matters pertaining to law enforcement.
>
> Section 4. To promote the advancement of crime prevention and detection.
>
> Section 5. The Fraternal Order of Police denounces disloyalty and our oath of obligation binds us to our allegiance to these United States.
>
> Section 6. The Fraternal Order of Police stands for justice to humanity and for its rights, safety and development. We believe in the equality of all before the law.

Section 7. We advocate the rigid enactment and enforcement of civil service laws for the police of the various states and nation.

Section 8. The Fraternal Order of Police advocates and will work for the establishment of pension funds for the various cities of these States and Nation."

Proposed associate members are chosen via ballot box, all the lodge members present having the right to vote (R. 43-44). No extra charge is made to an associate member for the emblem, but he gets it when he pays his membership fee (R. 42). These membership fees vary according to the regulations of the local lodges, from $5.00 up to $25.00 in different lodges (R. 42-43). The emblems are numbered (R. 44) and if one is lost or stolen an effort is made to recover it (R. 44). There is no distribution among members of membership rolls—they are only in the records of the lodge (R. 44). It is the desire of the Order that the associate members display this emblem (R. 44-45).

3. On February 2, 1942, the trial court rendered its opinion against plaintiffs (R. 45-51) and on February 20, 1942, a decree was entered dismissing the bill of complaint (R. 52-53).

4. Thereafter, February 21, 1942, a notice of appeal (R. 53-55) to the Supreme Court of the State of Michigan was filed, and the matter there came on for hearing on January 13, 1943, and was submitted on briefs filed in behalf of both parties, and oral arguments in behalf of defendants (R. 57). Whereupon, upon June 30, 1943, the Supreme Court of the State of Michigan rendered its opinion (R. 67-78) and entered its order sustaining the decision below (R. 58).

5. There after, plaintiffs, on July 28, 1943, filed in the Supreme Court for the State of Michigan an application

for rehearing (R. 59-65), which was denied September 7, 1943 (R. 66-67).

III. This court has jurisdiction to issue a writ of certiorari to the Supreme Court of the State of Michigan, for the following reasons:

1. Under the terms of the amendment to the Judicial Code, being the Act of February 13, 1925, Chapter 229, 43 Stat. 936, by Section 237 (b) "it shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or found by the highest court of the State in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the constitution."

The manner of raising the points will be set forth hereinafter, but it was urged on behalf of plaintiffs, these petitioners, throughout the proceedings, that the threat of defendants to discharge police officers of the City of Lansing whose rank was above that of sergeant, if they became members of the Fraternal Order of Police, was a threat to infringe, violate, or deny a "title, right, privilege, or immunity" under the freedom of speech and right of assembly clauses of the First Amendment to the Constitution, and also the due process and equal protection clauses of the Fourteenth Amendment. It is charged in the amendment to the bill of complaint (R. 5-6) that the resolution adopted by the defendants and threat of action pursuant thereto are "arbitrary and unreasonable and constitute an abuse of defendants' official discretion, and an infringement of plaintiffs' legal rights—."

2. As to jurisdictional time, the determination of the Supreme Court of the State of Michigan occurred June

30, 1943, and rehearing was denied September 7, 1943. Under the terms of the aforesaid Act of February 13, 1925, Section 8 (a) a petition for writ of certiorari may be filed within three months of final determination, which time may be extended by this court for good cause shown. Such time was extended on petition filed in behalf of petitioners by order entered by this court December 2, 1943, up to and including February 5, 1944.

IV. The questions presented to this court and the manner of their raising is as follows:

1. Paragraph 10 (R. 9-10) of the bill of complaint filed in behalf of plaintiffs is as follows:

> "Your plaintiff further shows by this means of indirect threat as follows:
>
> > 'Any person who disobeys such order will be called before said commission and is subject to dismissal or other action that said commission may see fit to take in the form of punishment.'
>
> This has acted as an indirect threat against members and superior officers of said organization, and contrary to the provisions of the First Amendment to the Constitution of the United States, reading as follows:
>
> > 'Congress shall make no law * * * abridging the freedom of speech * * * or the right of the people peaceably to assemble * * *.'
>
> Your plaintiff further shows that said unlawful action of said defendants further infringes upon the rights of plaintiffs and their members under the following provisions of the Constitution of the United States, to-wit: Section 1 of the 14th Amendment, which reads in part as follows:

'No state shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the eqaul protection of the laws.'

Your plaintiff further shows that the foregoing action of said defendants is a further infringement of the rights of said plaintiffs and their members under Section 2, Article 2 (Bill of Rights) of the Constitution of the State of Michigan, reading as follows:

'The people have the right to assemble together in a peaceable manner, to consult for their common good * * *.' ''

2. Paragraph 12 of said bill (R. 11) is as follows:

"Plaintiffs further show that they have no adequate remedy at law to restrain the encroachment upon their constitutional rights, and that if said order is not rescinded or restrained from enforcement, that the plaintiffs will suffer irreparable injury, not only to the Lansing City Lodge but to the Fraternal Police Organization in its fraternal, social, and charitable work; that said order casts a cloud on the lawful purposes of said plaintiffs' organization, creates a doubt in the public minds as to its lawful purposes and objectives for all of which said grievances the plaintiffs have no adequate remedy at law."

3. The amendment to said bill of complaint of December 8, 1941 (R. 5-6) is as follows:

"By inserting a new paragraph at the end of paragraph X to be known as paragraph X-A, to-wit:

The defendants by the aforesaid resolution as set forth in paragraph VIII and the supplementary statement as set forth in paragraph X, i. e., 'Any person who disobeys such order will be called be-

fore said Commission and is subject to dismissal or other action that said Commission may see fit to take in the form of punishment,' which acts as aforesaid are arbitrary and unreasonable and constitute an abuse of defendants' official discretion, and an infringement of plaintiffs' legal rights, for all of which irreparable injuries plaintiffs are without adequate remedy at law.

By inserting in line 19, paragraph XIV, after the semicolon following the word 'organizations' the following: 'also enjoining the defendants from preventing inclusion of associate members in said lodge and subordinate lodge, or either.' "

4. Counsel for plaintiff orally urged in the trial court that denial of relief prayed would be in violation of the constitutional rights of plaintiff as set forth in said bill of complaint (R. 26).

5. In the Supreme Court of the State of Michigan plaintiffs stated the reasons and grounds of appeal as follows (R. 55):

"1. The Court erred in denying plaintiffs' prayer for a permanent injunction.

2. That the Court erred in denying the plaintiffs relief so that the plaintiffs cannot establish Honorary memberships.

3. That the Court erred in denying the plaintiffs affirmative relief.

4. That the Court erred in determining that the charges set forth in plaintiffs' bill of complaint and answers filed thereto, were not sustained by the proof, and in refusing to grant plaintiffs affirmative relief. Such determination is against the preponderance of the evidence and is not sustained by any evidence produced at the trial."

6. The questions thus raised were argued in the said Supreme Court by means of briefs (R. 57), and upon adverse decision, by an application on behalf of plaintiffs for a rehearing (R. 59-65).

7. There were therefore raised in the Supreme Court for the State of Michigan two Federal questions, both decided adversely to plaintiffs, these petitioners, as follows:

(a) That the action taken by the defendants in adopting the resolution in question and their threat to enforce it constitute a threatened invasion of plaintiffs' rights under the Equal Privileges and Immunities Clause of the Fourteenth Amendment to the Constitution, and

(b) The same constituted a threatened invasion of plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the Constitution.

8. Other questions were raised under the constitution of the State of Michigan, particularly involving the right of assembly.

V. The reasons relied on for issuance of writ of certiorari are as follows:

1. The Supreme Court of the State of Michigan has decided two Federal questions, as above indicated, not heretofore decided by this Court. While this Court has decided questions which are doubtless of some degree of similarity, the precise question as to whether or not law enforcement officers may organize into a fraternal order for the purposes indicated in this record, despite the objections of those in authority over them, has not been decided by this court. The questions are of importance, for they affect the existence and growth of a National

organization of law enforcement officers, and, of course, on the other hand, tend to fix the line separating acts of law enforcement officers which may be considered strictly private and personal, from those which may be a part of what the officer owes the public.

Wherefore, petitioners pray that this Court by its writ of certiorari require that the Supreme Court of Michigan certify to it for review and determination the final decision of the Supreme Court of the State of Michigan in said cause.

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